IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.863 OF 2004
IN
NOTICE OF MOTION NO._____ OF 2004
IN
S.C. SUIT NO.3976 OF 2004

Anand Nagar Rahivashi Sangh ... Appellant

V/s.

Sr.Manager (Airodrome)
Civil Airodrome, Juhu
Mumbai - 49 ... Respondent

Mr.M.S. Menon for Appellant
Mr.Girish Kulkarni with Mr.Sarang Khanzode i/b M.V. Kini & co. for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 19, 2004**

P.C.:

. This Appeal from Order has been filed against the order passed on the Notice of Motion on 10.9.2004 whereby the appellant had sought an injunction against the airport authority and the Mumbai Municipal Corporation from demolishing the suit premises at Anand Nagar, N.Pereira Wadi, Juhu Tara Road, Juhu, Mumbai - 400 049. The learned trial Judge has considered the submissions made on behalf of the appellant which basically are that without notice to the appellant, the suit structure is sought to be demolished. The contention raised was that public notice for demolition

was affixed on the wall of one of the structures to be demolished and all unauthorised hutments on the land bearing CTS No.948, of Juhu Village, Juhu Tara Road, located opposite Tulip Star hotel and adjacent to Periera Wadi Housing Society and within the boundary wall of Civil aerodrome, Juhu were to be demolished within 48 hours of the publication of the notice.

2. The trial Court has considered the order dated 28.6.2004 passed in Public Interest Litigation (Writ Petition No.2797 of 1988 and other connected writ petitions). The Division Bench while disposing of these writ petitions has settled a detailed scheme and the manner in which the hutments were to be removed in order to beautify the land surrounding the Juhu beach, with construction of proper stalls and segregating a parking space. One of the directions stated therein is as under:

> 5. Respondent Nos.1 to 3 should ensure that the development of the two parking lots as per the plans under the Scheme is completed and that they are made operational as soon as possible, and, in any event, within a period of eight weeks.

2. It is in these circumstances that the Airport authority has issued notice for eviction under the Public Premises (Eviction of Unauthorised Occupants) Act

so that the suit structures could be demolished. Clause 12 of the order of the Division Bench reads thus:

> 12. Respondent Nos.1 to 3 all other concerned authorities and agencies should take immediate action to demolish/remove all remaining encroachments, unauthorised development, or extension of private properties/property boundaries and dumped material on the beach as per the surveys conducted by the office of the 1st Respondent and the Monitoring Committee.

3. Clause 19 which the learned Advocate relies on reads thus:

> 19. The Mumbai Municipal Corporation is directed to take steps to remove the unauthorised hutments in Air Port Authority land on Juhu Beach in accordance with law after issuing prior notices to the concerned hutment dwellers and considering their objections against the demolition.

4. According to the learned Advocate for the Appellant, it is only the Mumbai Municipal Corporation which could have initiated steps to remove the unauthorised hutments in the airport authority land after issuing prior notices to the concerned hutment dweller and on considering their objections against the demolition. Admittedly, the suit structures are not on Juhu beach but are at a distance from the beach. These structures are on the land which belongs to Airport Authority of India and, accordingly, the Airport

Authority was directed by the Division Bench in writ petition No.2797 of 1988 and other connected matters to make available as soon as possible and in any event within a period of eight weeks from the order passed by the Division Bench on 28.6.2004, the parking lots as per the scheme. It is in view of these directions that notice has been issued.

5. The trial Court has effectively dealt with all the issues. I see no reason to interfere with the order of the trial Court. Appeal from Order dismissed.

6. In view of the dismissal of the Appeal from Order, Civil Application No.1173 of 2004 does not survive and the same is disposed of accordingly.